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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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NOV 30 2004

FILE:

Office: MIAMI, FLORIDA Date:

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the District Director's decision. The matter is now before the AAO on a motion to reopen. The motion will be dismissed and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. The CAA provides, in part:

[T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, (now the Secretary of Homeland Security, (Secretary)), in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The District Director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(4) of the Immigration and Nationality Act (the Act). The District Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application. *See District Director's Decision* dated May 10, 1990. The decision was affirmed by the AAO. *See AAO's decision*, dated June 26, 1990.

On motion to reopen, filed on November 12, 2003, counsel states that based on the changes in the immigration laws made in 1990, and subsequent case law concerning the exclusion of persons characterized as "homosexuals" the application for adjustment of status should be approved.

The regulation at 8 C.F.R. § 103.5 states in pertinent part, that:

Reopening or reconsideration.

(a) Motions to reopen or reconsider in other than special agricultural worker and legalization cases--

(1) When filed by affected party--

(i) General. . . . Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

As noted above the AAO affirmed the District Director's decision on June 26, 1990. The motion to reopen was filed on November 12, 2003, more than 13 years after the District Director's decision was affirmed. This office finds that the failure to file a motion to reopen within the allotted time was not reasonable and beyond the control of the applicant. Counsel bases his motion to reopen on changes in immigration laws that date back to the 1990's and refers to caselaw from 1967, 1981, 1983 and 1984. Therefore, a favorable exercise of the Secretary's discretion is not warranted and the motion to reopen will be dismissed.

This decision is without prejudice to the filing of a new application for adjustment of status under the CAA of November 2, 1966.

ORDER: The motion is dismissed and the prior AAO decision is affirmed.